IN THE DISTRICT COURT OF
APPEAL OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 2004

JUNE 23, 2004

DELMY SAFIE, ETC., ET AL.,
Appellant(s)/Petitioner(s),

CASE NO.: 3D03-2226

vs.

CARLOS SAFIE, ET AL.,
Appellee(s) /Respondent(s).

Upon consideration, appellant's request for a written opinion; motion for rehearing is hereby denied. GERSTEN, FLETCHER and SHEPHERD, JJ., concur. Appellant's motion for rehearing en banc is hereby denied. SCHWARTZ, C.J., and LEVY, GERSTEN, GODERICH, GREEN, FLETCHER, SHEVIN, RAMIREZ, WELLS and SHEPHERD, JJ., concur. COPE, J., recused.

Seal of the Third
District Court of Appeal
of the State of Florida

s/s Mary Cay Blanks
Clerk, District Court of
Appeal, Third District

cc:
Neale J. Poller
Scott E. Perwin
R. Lawrence Bonner
William J. Palmer
la

IN THE DISTRICT COURT OF
APPEAL OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 2004

SEPTEMBER 22, 2004

DELMY SAFIE, ETC., ET AL.,
Appellant(s)/Petitioner(s),

CASE NO.: 3D03-2226

vs.

CARLOS SAFIE, ET AL.,
Appellee(s) /Respondent(s).

LOWER
TRIBUNAL NO. 02-14282

Upon consideration, appellant's motion to certify question as being of great public importance is hereby denied.

GERSTEN, FLETCHER and SHEPHERD, JJ., concur.

Seal of the Third
District Court of Appeal

/s/ Mary Cay Blanks
Clerk, District Court
of Appeal, Third District

cc:
Neale J. Poller
Scott E. Perwin
R. Lawrence Bonner
William J. Palmer

la

APPENDIX C
EXHIBIT 1

TRUST AGREEMENT

ALEJANDRO T. SAFIE, GRANTOR

TO

ALEJANDRO T. SAFIE, TRUSTEE

Dated: August 18, 1981

Pryor, Cashman, Sherman & Flynn
410 Park Avenue
New York, NY 10022

TRUST AGREEMENT made as of the 18th day of August, 1981 between ALEJANDRO T. SAFIE, (hereinafter called the "Grantor"), and ALEJANDRO T. SAFIE, (hereinafter called the "Trustee").

1. The Grantor hereby transfers and delivers to the Trustee the property listed in Schedule A, hereto annexed, the receipt of which is hereby acknowledged by the Trustee, upon the express terms and conditions and with the powers and limitations hereinafter set forth. Additional property may from time to time be transferred by the Grantor or by any other person or persons to the Trustee with his consent, and such property shall thereupon become a part of the trust estate and shall be held, managed, invested, and reinvested, and disposed of on the same terms and conditions as the property originally transferred.

2. This Trust is revocable in accordance with Paragraph 10 and shall be known as the ALEJANDRO T. SAFIE Trust of August 18, 1981.

3. Until the death of the Grantor, the Trustee shall pay to or apply for the benefit of ALEJANDRO T. SAFIE, all of the net income of the Trust hereby created in quarterly or more frequent installments, in equal or unequal shares and in addition, so much or all of the principal of said Trust as said ALEJANDRO T. SAFIE may request.

4. Upon the death of the Grantor, the principal and accrued income of the Trust estate including any property to which the Trust is entitled, by reason of the Grantor's death, shall be disposed of in the following manner:

(a) The Trustee shall divide the Trust into two shares: Share "A" shall consist of fifty one percent (51%) of the trust estate to be held and administered for the benefit of CARLOS A. SAFIE; Share "B" shall consist of forty nine percent (49%) of the then trust estate to be held and administered for the benefit of ALEJANDRO MATIAS SAFIE. The

Grantor shall have the absolute right during his lifetime on notice to the Trustee to change the percentage of the trust estate to be allocated to each share or to eliminate or change the beneficiaries of each share.

(b) The Trustee shall pay over and distribute Share A to CARLOS A. SAFIE upon the death of the Grantor or if he should predecease the Grantor, the same shall be added to Share B.

(c) As to Share B, the Trustee shall pay over and distribute the one-third (1/3) of the then principal of the trust estate to ALEJANDRO MATIAS SAFIE when he attains the age of twenty-one (21) years, one-half of the then principal when he attains the age of twenty-five (25) years and the remainder of the then trust estate when he attains the age of twenty-eight (28) years. During the term of the Trust, the Trustee may in his discretion pay over or apply for the benefit of ALEJANDRO MATIAS SAFIE the current net income of the Trust. Any income not paid over or applied shall be added to the trust estate.

(d) When ALEJANDRO MATIAS SAFIE attains the age of 28 years, the trust shall terminate, and the entire trust estate as it shall then exist, both principal and income, shall be paid and distributed to him, free and discharged of all trust.

(e) If ALEJANDRO MATIAS SAFIE dies before he attains the age of 28 years this Trust shall terminate upon his death, and the entire trust estate as it shall then exist, both principal and income, shall be paid and distributed in equal shares, to the then male issue of the Grantor's daughters or if non, to the then issue of ALEJANDRO MATIAS SAFIE or if none, to

the then issue of the Grantor's daughters or if none, to the then issue of the Grantor.

(f) The Trustee may make payments for the benefit of ALEJANDRO MATIAS SAFIE directly to him, or to the guardian of his person or property, or to any other person deemed suitable to the Trustee.

5. In the administration of the Trust, the Trustee shall have the following powers, all of which shall be exercised in a fiduciary capacity, primarily in the interest of the beneficiary:

(a) To hold any or all of the trust estate in the form of investment in which received.

(b) To sell at public or private sale, to mortgage, create a security interest in, pledge, or hypothecate, or to exchange or lease (including lease for a period extending beyond the term of this Trust), any stocks, notes, securities, real estate, minerals, and other Trust property, upon such terms, cash or credit, or both, as he may deem advisable.

(c) To invest and reinvest the trust estate, without limitation to trust of fiduciary investments, in investments of any kind, real or personal, including, without limitation, stocks, bonds, notes, mortgages, lands, minerals, royalties, leaseholds, participations in partnerships, joint ventures, and other business enterprises.

(d) To construct, add to, repair, or demolish (in whole or in part) any improvements upon any trust property.

(e) To participate in any reorganization, consolidation, merger, or dissolution of any

corporation, the stocks, bonds, or other securities of which may be held at any time as part of the trust estate and to receive and continue to hold any property which may be allocated or distributed to him by reason of participation in any such reorganization, consolidation, merger, or dissolution.

(f) To make or hold investments or any part of the trust estate in common or undivided interests with other persons, corporations, or trusts.

(g) To demand, receive, receipt for, sue for, and collect any and all rights, money, properties, or claims to which this Trust may be entitled, and to compromise, settle, arbitrate, or abandon any claim or demand in favor of or against this Trust.

(h) To borrow funds for this Trust in such amounts and for such purposes as to them shall seem for the best interest of this Trust and the beneficiary thereof, and to purchase property on the credit of this Trust, and, in connection with such borrowing or such purchase, to execute and deliver promissory notes or other evidences of indebtedness of this Trust and to mortgage, create a security interest in, or pledge all or any part of the trust estate to secure payment of such indebtedness, and to repay such indebtedness out of the trust estate.

(I) To employ agents, legal counsel including a partnership of which Trustee is a member, brokers, and assistants, and to pay their fees and expenses, as they may deem necessary or advisable to carry out the provisions of this trust.

(j) To vote in person or by proxy any shares of stock which may form part of this trust.

(k) To lend money to any person or persons upon such terms, but with adequate interest and security, as they may deem advisable for the best interest of this trust and the beneficiary hereunder.

(l) To elect, appoint, and remove directors of any corporation, the stock of which shall constitute trust property, and to act as a director and officer of any such corporation.

(m) Generally, and without limitation by any specific enumeration herein, to manage, control, operate, convert, reconvert, invest, reinvest, sell, exchange, lease, mortgage, create a security interest in, pledge, pool, or otherwise encumber and deal with the property of this trust, for and in behalf of this trust and the beneficiary thereof, to the same extent and with the same powers that any individual would have in respect to his own property and funds.

(n) The Trustee may freely act under all or any of the powers by this Agreement given to him in all matters concerning this trust, after forming his judgment based upon all the circumstances of any particular situation as to the wisest and best course to pursue in the interest of this trust and the beneficiary hereunder, without the necessity of obtaining the consent or permission of any person interested therein, or the consent or approval of any court, and notwithstanding that he may also be acting individually, or as trustee of other trusts, or as agents for other persons or corporations interested in the same matters, or may be interested in connection with the same matters as shareholder, director, or otherwise, provided, however, that he shall exercise such powers at all times in a fiduciary capacity primarily in the interest of the beneficiary hereunder.

The powers herein granted to the Trustee shall be deemed to be supplementary to and not exclusive of the general powers of trustees pursuant to law, and shall include all powers necessary to carry the same into effect.

6. Notwithstanding anything herein contained to the contrary, no powers enumerated herein or accorded to Trustees generally pursuant to law shall be construed to enable the Grantor, or the Trustee, or any other persons to purchase, exchange, or otherwise deal with or dispose of the principal or income of the Trust for less than an adequate or full consideration in money or money's worth, or to enable the Grantor or the Trustee to borrow the principal or income of the Trust, directly or indirectly, without adequate interest or security. No person, other than the Trustee, shall have or exercise the power to vote or direct the voting of any stock or other securities of the Trust, to control the investment of the Trust, either by directing investments or reinvestments or by vetoing proposed investments or reinvestments, or to reacquire or exchange any property of the Trust by substituting other property of an equivalent value.

7. The Grantor if living or, if not, the Trustee or his survivor or successor shall have the power at any time to designate a successor or Co-Trustee or Trustees, and such successor or Co-Trustee or Trustees shall have the same duties and powers as are assumed and conferred in this Agreement upon the Trustee, including the power in any successor to himself appoint a successor. Any appointment of a successor or Co-Trustee or Trustees shall be made in writing, shall be acknowledged, and shall state the time or the event when such appointment shall take effect, which shall not be less than forty-five (45) days after such notice. A copy of such appointment shall be delivered to the Grantor and the primary beneficiary or his natural or legal guardian.

The Grantor during his lifetime shall have the right to remove any Trustee then acting, by written notice delivered to such Trustee or to nominate and appoint a successor Trustee.

If no Trustee shall be qualified and acting as such, CARLOS A. SAFIE, is hereby designated as successor Trustee and if he shall not qualify or having qualified ceased to act, ARNOLD M. LEIBOWITZ of Miami, Florida is hereby designated as successor Trustee.

8. No bond or other security shall be required of the Trustee or of any successor Trustee.

9. Any direction or provision herein contained to the contrary, wherever in this Agreement the Trustee is authorized or directed to pay over the income or any part of the principal to a beneficiary who has not attained the age of majority under the laws of such beneficiary's domicile, or to apply the same for the care, education and support of such beneficiary, the Trustee is authorized in his sole and absolute discretion to accumulate said principal or income during the period of the beneficiary's minority, or to pay over the same to the legal or natural guardian of said beneficiary, or to pay it directly to said beneficiary, or by otherwise applying such income or principal for the care, education and support of such beneficiary, all without bond. The receipt of any person to whom payment shall be made pursuant to the preceding sentence shall be sufficient acquittance and discharge to the Trustee and he need not look to the application of such payments. For the purposes of this Paragraph and the Trust created herein, the "age of majority" shall be twenty-one (21) years unless prohibited under the laws of said beneficiary's domicile.

10. The Grantor reserves the pow4r at any time or from time to time during the time of his life to alter, amend or revoke in whole or in part the terms and provisions of this Declaration of Trust and the Trusts hereby created, by an

instrument in writing, mailed or delivered to the Trustee. In the event that the Grantor shall revoke this Trust, the Trustee shall pay over and transfer the Trust estate, including any accumulated income, or the portion thereof to which said revocation is applicable, to the Grantor or as the Grantor may direct in writing.

Upon the death of the Grantor, this Declaration of Trust and the Trusts hereby created shall be irrevocable.

11. The Trustee may render an accounting at any time to the primary beneficiary of the Trust created herein, and the written approval of such beneficiary (or of his natural or legal guardian if such beneficiary shall be minor) shall be final, binding, and conclusive upon all persons then or thereafter interested in the Trust. The Trustee may at any time render a judicial accounting of his proceedings.

Any successor Trustee may accept and rely upon any accounting statement by or on behalf of any predecessor Trustee hereunder and shall not be liable for having accepted and relied upon such accounting statement or representation if it is later proved to be incomplete, inaccurate or untrue.

12. Any Trustee acting hereunder may resign at any time by written notice to the Grantor, if living, or if not to his legal or personal representative, the nominated successor Trustee and to the primary beneficiary. If such primary beneficiary shall be a minor or under any legal disability such notice shall be given to his natural or legal guardian or legal representative. Such resignation shall take effect upon the date specified in such notice, but not less than forty-five (45) days after the mailing or delivery of such notice, and upon the date so specified, all duties of the Trustee so resigning shall case.

13. If any beneficiary under the Trusts created by this Agreement shall, in any manner, directly or indirectly, attempt to contest or oppose the validity of the said Trust or any part thereof, in any court or commence or prosecute any legal proceeding of any kind in any court to set aside or declare invalid the said Trust or any part thereof, then and in that event such beneficiary shall forfeit and case to have any right or interest whatsoever under said Trust, and in such event, the principal of the Trust and the income therefrom shall be disposed of in all respects as if such beneficiary had predeceased the Grantor.

14. All questions relating to the validity, construction and administration of this Trust shall be determined in accordance with the laws of the State of Florida.

15. The Trustee hereby accepts the Trust herein created.

16. The title, powers, duties, immunities and discretions herein conferred upon the Trustee shall continue after the termination of the Trust, until final distribution.

17. The interest of any beneficiary, primary or otherwise in the principal or income of the Trust created herein, shall not be subject to assignment, alienation, pledge, attachment, or claims of creditors and shall not otherwise be voluntarily or involuntarily alienated or encumbered by such beneficiary.

18. Should any of the provisions of this Trust fail or be held ineffectual or invalid for any reason, no other portion or provision of this Trust shall be invalidated, impaired or affected thereby, but the Trust shall be construed as if such invalid portion or provision had not been herein contained.

In Witness Whereof, the Grantor and the Trustee have executed this Agreement the day and year first above written.

/s/_____
Alejandro T. Safie, Grantor

/s/_____
Alejandro T. Safie, Trustee

STATE OF FLORIDA)
)ss.:
COUNTY OF DADE)

On the 18 day of August 1981, before me personally appeared ALEJANDRO T. SAFIE, to me known and known to me to the individual described in and who executed the attached instrument, and he duly acknowledged that he executed the same.

/s/_____
Carolyn M. Elliott
Notary Public
Notary Public State of Florida at Large
My Commission Expires July 28, 1985
Bonded Thur General Ins. Underwriters